

From: [Ward Blackwell](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Thomas H. Price; L. Stephen Ortego; Edward J. Hebert; Marty B. Garrett; David Baughman;](#)
Subject: Form 990 revisions
Date: Friday, September 14, 2007 7:20:19 PM
Attachments: [LDA to IRS 9-14-07.doc](#)

Please accept the attached MS Word document as comments from the LDA on the proposed revisions to Form 990. Please note that the document CAN be opened and read without a password, but cannot be modified without a password. This is a standard precaution to ensure the integrity of official LDA communiques of this nature and not intended to create any difficulty for the recipient.

Thanks,

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LOUISIANA DENTAL ASSOCIATION

May 11, 2007

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

The Louisiana Dental Association (LDA) is a section 501(c)(6) individual membership organization of more than 1,800 practicing and retired dentists in Louisiana. We advocate for dental professionals and their patients to improve the quality of oral health in the State of Louisiana and are a constituent society of the American Dental Association.

The LDA is supportive of the IRS objective to update a form that many reportedly view as outdated. However, it is the LDA's opinion that the draft Form 990 poses significant questions and concerns for associations and other nonprofit organizations such as ours that are required to file. Due to the diversity of organizations in the tax-exempt community – diversity in size, type of organization, geographical scope, activities, and sources of revenue – the proposed changes to the form will impact tax-exempt organizations differently. In particular, we find that many of the revisions will prove unwieldy and burdensome to smaller professional associations (as opposed to 501(c)(3) charitable organizations) with minimal material benefit for the IRS.

Here then, are the specific areas of our concern

Summary (Part I) – The LDA understands that the purpose of Page 1 "Summary" section is to provide an overall "snapshot" of the organization. This is a useful and logical approach to Form 990 redesign, and LDA believes that the information presented in this section should be pertinent, important, consistent, and contextually accurate. The current draft summary page, however, appears to be more of a collection of disparate facts, rather than an overall cohesive picture of the reporting organization. Furthermore, the

summary page calculates compensation and fundraising expense ratios that are both meaningless and grossly misleading, especially to the casual Form 990 reader.

Additionally, it is our opinion that the draft summary page, while designed to be relevant for charitable organizations, is not adequately able to capture the significant distinctions and differences of professional/trade associations. LDA is concerned that unsophisticated readers of the 990 may come away with an erroneous impression of non-charitable organizations, especially if they do not bother to read beyond the first page. We are also specifically concerned about:

- Questions 3 and 4 ask for total governing body members and total "independent" governing body members. Frankly, the term "independent member of a governing body" is somewhat meaningless, in the context of a professional/trade association or business league. By definition, a professional/trade association is a membership organization composed of individuals or corporations who have bonded together for a common business purpose. Virtually every member of a trade association is "related" to the organization, in one form or another. This means that every single governing body member could very well fail at least one of the "independence" definitions set forth in the draft Glossary. Accordingly, a "zero" answer to Question 4 would provide a misleading and distorted picture of the trade association or business league providing such answer.
- LDA does not believe that Question 6, which asks for the number of persons receiving compensation of more than \$100,000, necessarily serves a useful purpose. While compensation of \$100,000 may be a significant amount for many charitable organizations, it is not necessarily so for many larger non-charitable organizations. Business leagues and trade associations especially tend to have higher-salaried employees. These organizations exist specifically to promote business and industry, and draw their employees from the business world. Accordingly, overall compensation of employees at the average trade association may be higher than that of a comparably sized charity. LDA recommends exempting non-public charities, 501 (c)(6) organizations, and others, as is currently the case.
- Question 7, which asks for the highest compensation amount reported in Part II, seems to have no purpose other than "sensationalism." It provides salary information completely out of context with the rest of the organization, its size, mission, revenues, and programs. Providing a single compensation figure out of context is utterly misleading. Since compensation for the chief executive officer, typically the highest compensated employee, is required in Part II of the core form, LDA recommends this question be eliminated from the summary page.
- Questions 8b, 19b, and 24b calculate "metrics" or percentage ratios that purport to measure certain organizational efficiencies. LDA strongly disputes the use of metrics in general, as by their very nature they are of limited utility and are prone to manipulation. LDA particularly objects to the specific metrics presented on the summary page. These ratios are arbitrary; furthermore, they are neither accepted nor used in any segment of the nonprofit world. Furthermore, because of the vast diversity of organizations required to file the 990, any attempts to use these metrics to compare one organization with another -- even similar organizations -- would yield highly unreliable results. This is especially true for comparisons involving charitable organizations and professional associations, whose objectives are fundamentally different. LDA firmly requests that all "efficiency metrics" or ratios be removed from the Form 990, as they will merely take the place of thoughtful evaluation on the part of Form 990 readers -- especially the media, potential donors, and grant makers.

Additionally, it might be useful to add "consolidated financial information" lines to Part XIV of Schedule D, to allow organizations to back out consolidated financial information pertaining to related organizations.

- Questions 25 and 26 have little relevance to trade associations, and are another example of the summary page's bias toward charitable organizations. LDA requests that this section be moved off the front page, and replaced with more useful information, such as a summary of program service accomplishments. Additionally, Question 2, which asks for the three most significant activities and activity codes, is completely meaningless to the casual Form 990 reader, who would be better served by a brief summary of annual accomplishments.

Compensation (Part II and Schedule J) -- LDA firmly supports the concept of transparency, including disclosure of compensation for officers, directors, and key employees. Nevertheless, LDA is greatly concerned over the extensive compensation reporting required by the new Form 990. Specific concerns are as follows:

- LDA questions as inappropriate the expansion (in the draft Glossary) of the definition of "key employee" to include a person "who has responsibilities, powers, or influence like those of officers, directors, or trustees, *including a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization.*" [Emphasis added.] In practice, these so-called "department heads" generally have less power and influence than the Glossary definition assumes, and including their compensation will serve no real purpose, other than providing additional fodder for reporters, as well as disclosing potentially damaging "inside" information to competing organizations. LDA suggests that the IRS return to the definition for "key employee" currently included in the Form 990 instructions: "any person having responsibilities, powers or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization... [for example] a chief financial officer and the officer in charge of the administration or program operations are both key employees if they have the authority to control the organization's activities, finances, or both." LDA interprets this definition as excluding department heads, as they in most cases have insufficient authority to "control" the organization's activities or finances, and so do not have powers or influence "similar to those of officers, directors or trustees."
- Likewise, LDA questions expansion of compensation reporting for the "5 highest paid" employees, believing it also is inappropriate, for non-charitable organizations, for the same reasons, and for smaller organizations for whom virtually all employees might be "department heads" of one-person departments. LDA requests that non-section 501(c)(3) and/or smaller organizations be exempted from this additional reporting requirement, as well as from the "5 highest paid independent contractors" requirement.
- LDA is troubled by the new Form 990's disclosure of the city and state of residence for every person listed in Part II, Section A. Because the Form 990 is available to anyone over the Internet via Guidestar (and possibly other online venues as well), the disclosure of this information could lead to privacy invasion, or even outright identity theft. In public comments, you have indicated that knowing the physical location of these individuals is meaningful for 990 reporting purposes. ("We believe it is important to know, for example, if an organization is situated in New York City but all of its board members are in California.") LDA strongly disputes the importance of this information, particularly for organizations whose purpose, bylaws, etc. already restrict membership to those in a concise geographical area (e.g., a single state). We suggest that

providing the member's state of residence, rather than city and state, would accomplish the same purpose, and would constitute a far lesser invasion of privacy. Another alternative might be to exempt organizations that have limited (i.e., less than national) scope. LDA prefers, though, that the organization's address continue to be an alternative for this reporting purpose.

- LDA is concerned over one particular question asked in Section B of Part II. Question 3 asks whether the compensation process for an organization's CEO, Executive Director, Treasurer, and CFO includes "a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision." This is a difficult question for most associations to answer with any accuracy, because it is common industry practice for an association's Board of Directors to hire and compensate the CEO and/or Executive Director;¹ but not the CFO -- who is usually hired and compensated by the CEO or Executive Director. Accordingly, if an association complied with stated procedures for every listed position *other* than the CFO, it would still be forced to answer "no" to this question. This would be a highly misleading answer. LDA recommends that if this question is retained in the final Form 990 version, that a checkbox be provided for *each* position: CEO, Executive Director, Treasurer, CFO, and permit an organization to check "N/A" if the position is unpaid or does not exist at that particular organization.
- With regard to executive compensation reporting on Schedule J, LDA does not see the utility of providing nontaxable expense reimbursements (Column E). As these amounts merely represent repayments for legitimate business expenditures submitted and documented under an "accountable plan," no meaningful information can be gleaned by the amount of expenses so reimbursed. Moreover, unsophisticated readers of the form may wrongly misconstrue any large amounts listed. Organizations vary in their reimbursement policies, and what may seem like an excessive amount of reimbursement may merely reflect a difference in accounting practices and procedures: employees and board members of Organization A may, for example, book and pay for their own travel arrangements, whereas at Organization B, all travel arrangements are booked and paid for by the organization itself. Furthermore, including nontaxable reimbursements in Column (F) significantly distorts total compensation figures.

Governance (Part III) -- LDA questions the statutory authority of the IRS to ask these questions, and believes they should be left out of the final Form 990 version. While LDA believes, as IRS does, that a well-governed organization is one that is compliant, LDA nevertheless feels strongly that these questions are not appropriate for Form 990 reporting, nor do they accurately reflect a complete governance picture. Furthermore, the governance practices implied by these questions are not necessarily appropriate for all of the vastly different types organizations required to file a 990. Some of the practices suggested by the questions are, frankly, impractical. For example, it is not usual practice for an organization's governing body to review the Form 990 before it is filed, nor should it be necessary, as long as organization management is accurately following a Board's directives. Additionally, not all documents listed in Question 11 are required to be disclosed, and LDA is concerned that a "no" answer may have negative implications, creating a *de facto* standard where none should exist.

Political Activities (Schedule C) -- While Schedule C principally consists of questions previously requested on disparate parts of the current Form 990 and its schedules, there is one addition to the form to which LDA objects, as it constitutes duplicative reporting. Question 5 requires all organizations to list the names, addresses, and EINs of all section 527 political organizations to which payments were made,

¹ The Treasurer of a trade association or business league is usually an unpaid volunteer Board member. Additionally, a trade association generally will have an Executive Director or a CEO, but not both.

including political contributions properly received from members and transferred to an association's own political action committee (PAC) under Federal or state law. All of this information is available elsewhere. For instance, contributions to the LDA's own PAC from our members are regularly reported in filings with the Louisiana State Board of Ethics. Additionally, associations making direct political contributions must report the recipients of those contributions in a timely filed Form 1120-POL.

LDA urges IRS to withdraw this question, except where such contribution information is not otherwise readily available. It is duplicative and merely adds needlessly to the complexity of the revised 990.

Administrative Burden -- Overall, LDA objects to the additional taxpayer burden inherent in the expanded Form 990. Organizations large and small, charitable and non-charitable, will be forced to spend many additional hours gathering information for both the core form and the schedules. This will be especially burdensome for small organizations, especially those staffed chiefly by volunteers, whose resources are thin to begin with and must typically pay someone else to complete their returns.

The LDA believes that transparency, compliance, and reduced regulatory burdens benefit both nonprofit organizations and the communities they serve. LDA does not believe that the current draft effectively addresses these principles. We sincerely hope that the IRS will consider our comments as guidelines for still further revisions to Form 990 that will indeed accomplish these stated goals of the IRS *without* unintended consequences and increased burden on the filing community.

Sincerely,

A handwritten signature in black ink, appearing to read "Ward Blackwell". The signature is fluid and cursive, with the first name "Ward" and last name "Blackwell" clearly distinguishable.

Ward Blackwell
Executive Director,
Louisiana Dental Association

Cc: LDA Executive Committee

From: [Dietz, Robert](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: NAHB Form 990 Comments
Date: Friday, September 14, 2007 4:13:43 PM
Attachments: [NAHB Comments_Form 990.pdf](#)

To Whom It May Concern:

Attached are comments regarding IRS Form 990 on behalf of the National Association of Home Builders.

Robert D. Dietz
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National Association of Home Builders
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September 14, 2007

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Catherine E. Livingston

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Internal Revenue Service

Form 990 Redesign

ATTN: SE:T:EO

1111 Constitution Avenue, NW

Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

The 235,000 members of the National Association of Home Builders (NAHB) appreciate the opportunity to submit comments on the draft Internal Revenue Service Form 990 and accompanying schedules in response to your request of June 14, 2007, regarding the revised form to be used for tax year 2008.

About NAHB

NAHB is a Washington, D.C.-based tax-exempt section 501(c)(6) trade association whose mission is to enhance the climate for housing and the building industry. Founded in 1942, NAHB is a federation of more than 800 state and local home builder associations (HBAs). About one-third of NAHB's 235,000 members are home builders and/or remodelers. The remaining members are associates working in closely related fields within the housing industry, such as mortgage finance and building products and services. NAHB's builder members construct about 80 percent of the new homes built in the United States.

While NAHB generally supports and adopts the comments previously filed by the American Society of Association Executives, we wish to point out some of the proposed modifications that will prove particularly onerous to an organization as unique as NAHB. NAHB prides itself on being "member-driven," with a professional staff of more than 350 in Washington. NAHB is an extremely decentralized and democratically structured federation with more than 2,000 members serving on the Association's board of directors and more than 120 on its Executive Board. The board of directors, whose members are nominated by state and local HBAs and elected at an annual meeting of the membership, elects the NAHB Senior Officers and adopts all of the Association's public policy initiatives.

Form 990 Concerns

In general, NAHB has serious concerns regarding the new reporting requirements associated with Form 990. Many of the new requirements appear to have been designed with section 501(c)(3) groups in mind and are administratively difficult, if not impossible, for a trade association the size of NAHB. Given the scale of NAHB and the NAHB federation at large, we respectfully ask for an extension of the comment period to allow for a more thorough examination of the compliance requirements. The existing comment period is not sufficient to consider thoroughly the impact of the new form on NAHB, in addition to the hundreds of state and local home builder associations that would be affected. We further request that implementation of the revised Form 990 be delayed until at least tax year 2009 to allow for adequate education of the volunteer leadership and staff at NAHB, as well as informing the state and local home builder associations who look to NAHB for guidance on how to comply with the new requirements of the form.

We are most concerned with the requirements of Part II of the core form. Section A of Part II requires listing all of the organization's current officers, directors, trustees and key employees. Section B of Part II requires reporting the business and family relationships of all persons listed in Section A. As noted above, NAHB's board of directors possesses more than 2,000 members. For an entity this size, complying with the Section B reporting requirement is nearly impossible. There is no mechanism by which NAHB can provide a complete accounting of the family relationships and business transactions of more than 2,000 directors, especially going back five years as is required by the form. Moreover, the new requirement to report directors' home city and state exposes those directors to undue public scrutiny. Again, these proposed reporting requirements appear to be intended for 501(c)(3) entities with smaller board structures. In that application, the new requirements may well serve a salutary purpose. However, these requirements would unduly burden a large membership organization that encourages broad, democratic membership involvement in its governing structure.

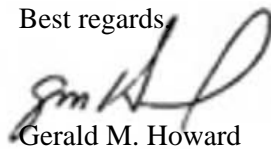
According to NAHB survey data from 2005, a similar problem will arise for its chartered state and local home builder associations ("HBAs"). Over 42 percent of state HBAs have 100 or more members on their board of directors, while 20 percent have between 50 and 99 directors. At the local level, data from this same survey show that 30 percent of local home builder associations have 20 or more elected board members while almost half have between 11 and 19 members on the board of directors. Additionally, boards of directors of local home builder associations have an average of between 11 and 15 ex-officio voting members. While similar data is not available for state home builder associations, they also are likely to have a significant number of ex-officio voting members on their board of directors. What this means in the context of the Section B of Part II compliance requirements is an extremely burdensome process of trying to track family relationships and business interactions for such large boards of directors.

Conclusion

NAHB supports the increased transparency and compliance that the new form is intended to promote. However, we believe the current draft represents an impractical approach for achieving this goal, especially for large, federated trade associations like NAHB. Given the administratively burdensome, and in some cases impossible compliance requirements of the revised Form 990, the proposed draft may have the counterintuitive effect of placing punitive information reporting requirements on those organizations that are the most participatory, democratic and representative in terms of scope of membership.

Thank you for considering our comments on the revised Form 990. Our state and local HBAs continue to evaluate the compliance requirements of the form as it affects their respective circumstances. As we receive that information, we will share it with you. In the meantime, if you have any questions or would like additional information, please contact me.

Best regards



Gerald M. Howard
Executive Vice President
and Chief Executive Officer

From: [Monique Valentine](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC: [Steve Sandherr; rhay@asaenet.org; Monique Valentine;](#)
Subject: 990 AGC.pdf
Date: Friday, September 14, 2007 3:26:57 PM
Attachments: [990 AGC.pdf](#)

Attached is our letter commenting on the draft redesigned Form 990. We are happy to answer any questions you may have.

Please contact myself or Steve Sandherr. _____

Monique T. Valentine, CPA, CFO

Associated General Contractors of America

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September 14, 2007

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Internal Revenue Service

Form 990 Redesign

ATTN: SE:T:EO

1111 Constitution Avenue, NW

Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

The Associated General Contractors of America (AGC) is a national trade association, 501(c)(6) organization, that represents over 32,000 member firms. AGC is pleased to have the opportunity to comment on the proposed changes to the Form 990, and accompanying schedules, that are expected to be implemented for the 2008 filing season.

AGC supports your efforts to enhance transparency, promote compliance and minimize the burden on filing organizations. As a leading nonprofit organization in the construction industry, AGC has taken similar steps to increase transparency within our own organization in order to keep our members fully informed about the association to which they belong and pay dues.

After reviewing the newly designed Form 990 and accompanying schedules, AGC has several concerns about new areas of focus on the forms. It is our opinion that the new form is geared mostly to 501(c)(3) organizations and the questions have been designed accordingly. As a 501(c)(6) organization, a number of the new questions and forms that are being requested could have adverse consequences both internally and externally if the information is taken out of context.

More specifically, the issues that we would like to address are as follows:

Part I – Summary: The addition of the Activities section makes sense to educate the reader on what the organization does without having to search through a lengthy return to find pertinent information. However, the addition of the Governance section is generally not an item of interest to the average reader and should not be located in the Summary section. Furthermore this information can and will be taken out of context with other pertinent information and the readers may make uninformed decisions based on the limited information provided.

Question 4 regarding the number of independent members of the governing body for an organization such as ours that has over 600 board members could be difficult to track and report on accurately. As a trade association, virtually every member of our governing body, is “related” to our organization either directly or indirectly. Therefore, we would possibly have to answer this question zero which creates more questions than answers. It would lead the reader to believe we give preferential treatment to Board members which is clearly not the case.

Questions 6 and 7 regarding compensation of staff adds no value to the reader by being included in the Summary section. Without knowing the total budget size, number of programs, etc. this information can be misleading. In addition, this information will have the potential to create morale issues within the employees of an organization. As a trade association located in the Metropolitan DC area, it is not uncommon to have a number of staff receiving compensation in excess of \$100,000. The same positions in states that have a lower cost of living would be significantly less but unfortunately there is no way to differentiate based on locality. These questions could have a negative impact on the lower paid employees within an organization.

Questions 8b, 19b and 24b that calculate ratios that measure an organization’s effectiveness do not belong on a tax form. These measures are used primarily by the organization’s financial staff to understand how the organization is performing. An individual that is not trained in the use of such ratios can easily make incorrect assumptions by simply looking at these percentages and comparing to similar organizations which can lead to incorrect assumptions about how an organization is performing.

Part II – Compensation: AGC agrees with reporting compensation for its Officers, Directors, and Trustees. In addition we agree with the reporting of compensation for our chief management officials to include the CEO and COO. However, we feel very strongly that the inclusion of an employee “who has responsibilities, powers, or influence like those of officers, directors, or trustees, including a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization” would require the reporting of all of our “department heads” compensation on the Form 990. These employees have less power than the current definition of a key employee in the current 990 form

instructions which says that a key employee is one that has responsibilities, powers or influence similar to officers, directors and trustees.

The reporting of these individual's compensation will have a tremendous negative effect by making public their compensation to competing trade associations with the necessary information to possible poach good staff and will negatively impact employee morale within the association. In addition, the reporting of the top five highest compensated individuals over \$100,000 adds no value to the reader who has requested our Form 990. It is our request that the requirements for reporting individuals in Part II be kept consistent with the current reporting requirement for 501(c)(6) organizations which includes only the Officers, Directors, Trustees, CEO and COO. By having to report all of the above as proposed, this could have a detrimental effect on employee morale within an organization.

In addition to the above we respectfully request that Question 2 in Part II regarding number of individuals receiving more than \$100k be deleted as it serves no useful purpose.

Section B, Question 3 – In most organizations only the CEO's salary is reviewed and approved by the independent board members. It is not customary for other positions, such as COO and CFO, to go through a board for review and approval. Therefore, it would appear that most reporting organizations would answer the question with a No. The reader of the statements could be lead to an incorrect assumption that the CEO's compensation is not reviewed by the Board, when in fact that is not the case.

Part III – Governance: Many of the questions asked in this section, specifically questions 3 – 6, are items that are covered in an audit of the financial books and records. These are appropriate questions to ask from an audit standpoint but we fail to see the need for reporting this information on a tax form. These are issues that pertain to managing and running a good nonprofit and are not "tax" items.

Question 7 regarding local chapters, branches and affiliates makes sense if there is a group exemption for these organizations. It would also make sense for 501(c)(3) organizations because when donors make contributions they want to make sure the local chapters are held to the same high standards as the National organization. For an organization that is not a charitable organization and where the chapters are separate legal entities, with their own tax-exempt status, and who are filing their own Form 990, what would be the value in asking this question?

Question 10 regarding review of the Form 990 by the governing body is something that does not typically happen for larger organizations. The members of our board are members who run their own companies but do not have the knowledge of nonprofit tax returns and would not be in a position to review and fully understand this type of return. The board relies on the CFO and the outside accounting firm who have the necessary expertise to prepare and review the returns prior to submission.

Question 11 on making information available to the public is very relevant for 501(c)(3) organizations but not relevant for non charitable organizations. In my tenure as CEO for AGC, the only time our form 990 was requested was when the media was looking to do an article on CEO compensation. Not a single member has requested a copy of our tax return.

Schedule C – Political Campaign & Lobbying Activities: As an organization that is required to comply with the Federal Election Commission reporting requirements, a number of the items requested herein are already reported to the FEC in our regular filings. Requiring the information to be repeated on the Form 990 will add a significant amount of time needed to complete the return and is duplicating information that has already been reported.

Question 1 asks for volunteer hours to be reported. As an organization that has over 32,000 member firms estimating the amount of volunteer hours devoted to lobbying would be nearly impossible. The construction industry is very fragmented with members belonging to multiple construction associations. How would you apportion their volunteer time if they are lobbying on the same issue for multiple organizations to which they belong? Also, as volunteers, what leverage would we have to require them to report their hours? Any number reported here would simply be an educated guess.

Schedule F – Statement of Activities Outside the US: As a trade association that has members that perform work abroad it is not uncommon to host meetings outside of the country. For organizations that have offices in other countries the schedule appears to make sense. But when organizations are simply holding meetings outside the US there is no added value to the reporting of this information. It is our request that this schedule only be required for organizations that have offices located outside the US.

Schedule J – Supplemental Compensation Information: In addition to the comments above under Part II – Compensation, we request that Columns D & E – Nontaxable Benefits and Nontaxable Expense Reimbursements be omitted from this schedule. AGC requires our employees to submit expense reports for legitimate business expenses for travel and other related business expenses under an “Accountable Plan”. The criteria are met for these reimbursements to be nontaxable to the employee. The reimbursement of organization expenses incurred by an employee has nothing to do with the employee’s compensation package. To include this information here will confuse the reader. Column F requires the nontaxable benefits and reimbursements to be added to compensation which can lead an uneducated reader to believe that this cumulative number represents their total compensation. It is highly misleading and will be used out of context by the media.

Question 3 requires the organization to indicate if it paid for first class travel for its officers, directors, etc. This question is relevant for a 501(c)(3) organization that is using donations to fund its operations and should be limited to (c)(3) organizations only.

Filing Burden: After reviewing the draft of the new Form 990 and its accompanying schedules, AGC estimates that it will double the amount of time that we currently spend preparing this form. In fact, it will push us to the point that we will hire outside help to prepare a form that up until now we have prepared internally for submission, significantly increasing our costs to comply with the filing requirements. While we are able to do this, many smaller nonprofit organizations may not have the flexibility to incur additional dollars to file such returns. We encourage you to revisit the changes that are being proposed and the potential impact on the nonprofit organizations that will have to comply with them.

Conclusion: It is our opinion that it would make more sense to have a different Form 990 for 501(c)(3) organizations. The readers of Form 990 for a (c)(3) are clearly looking for a lot more information to educate themselves on whether or not they will contribute to the organization. On the other hand, most individuals and companies will not review a Form 990 to decide whether to join a professional trade association. Therefore, a scaled back version of the Form 990 for all other non-C3 organizations would seem to make more sense than trying to put all organizations into one bucket.

In addition, we feel strongly that the proposed changes to the form do not achieve the three guiding principles that were set.

We thank you for taking the time to review our comments and would be happy to expand on any of the issues we have raised.

Sincerely,

A handwritten signature in black ink, appearing to read 'SES', with a stylized flourish at the end.

Stephen E. Sandherr
Chief Executive Officer

c: Robert Hay
American Society of Association Executives

From: [GINSBERG, Ellen](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Nuclear Energy Institute Comments on Draft Form 990
Date: Friday, September 14, 2007 2:57:31 PM
Attachments: [990 comments.pdf](#)
[att42c05.jpg](#)

September 14, 2007

Ms. Lois G. Lerner
Director of the Exempt Organizations Division of the IRS
Mr. Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE
Ms. Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)
Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz and Ms. Livingston:

The Nuclear Energy Institute (NEI) respectfully submits the following comments in response to IR-2007-117, released June 14, 2007, which requests public comment on the draft Form 990 and accompanying schedules.

NEI appreciates the opportunity to comment on the draft Form 990 and your consideration of our concerns and suggestions. As stated in our comments, we request that the Service extend the comment period to allow greater consideration of the proposed changes and more time to engage affected stakeholders. This will help ensure that the revised Form both meets the Service's stated objectives and is properly designed to enable associations and other filers to comply with the new requirements in a timely and reasonably cost-efficient fashion. Relatedly, we request a delay until 2010 (tax year 2009) for use of the Form.

If you or members of your staff have questions regarding these comments, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Ellen C. Ginsberg". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Ellen C. Ginsberg
Vice President, General Counsel and Secretary
Nuclear Energy Institute
1776 I Street, N.W., Suite 400
Washington, D.C. 20006
www.nei.org

P: 202-739-8140

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E [_____](#)

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NUCLEAR ENERGY INSTITUTE

Ellen C. Ginsberg
Vice President, General Counsel
and Secretary

September 14, 2007

Ms. Lois G. Lerner
Director of the Exempt Organizations Division of the IRS
Mr. Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE
Ms. Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)
Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz and Ms. Livingston:

The Nuclear Energy Institute (NEI) respectfully submits the following comments in response to the IR-2007-117, released June 14, 2007, which requests public comment on the draft Form 990 and accompanying schedules.

NEI is a nonprofit corporation exempt from income tax pursuant to section 501(c)(6) of the Internal Revenue Code. We serve as the policy organization for the commercial nuclear energy industry.¹ As a member of the nonprofit community, NEI supports the Service's interest in ensuring complete, accurate and timely filing of Form 990 by nonprofit organizations. We also support the Service's stated goals of ensuring transparency for it and the public while minimizing additional burden on filing organizations. We are concerned however, that issuance of the Form 990 as currently proposed would not achieve these goals but, rather, drive results that are directly contrary

¹ The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

to them. Thus, we strongly support and urge careful consideration of the comments submitted by the American Society of Association Executives (ASAE).

As was stressed in the ASAE comments, we believe that there would be significant benefit both to extending the comment period to allow those affected by the proposed changes to more thoroughly consider their implications, and to delaying the implementation of the revised core form and schedules. Given the long-lasting effect of modifying Form 990, it is critically important that the nonprofit sector fully understands what is expected, has a sufficient opportunity to develop and submit recommendations for improvements, and be able to comply with the new requirements in a timely and reasonably cost-efficient fashion.

NEI agrees with ASAE's overall assessment of the draft Form. While we will not repeat concerns adequately covered by ASAE's comments, we wish to emphasize our concerns about the features of the draft Form which do not seem to recognize the differences in the manner in which 501(c)(3) organizations materially differ from associations and other non-charitable organizations. We agree with ASAE that "many of the questions in the draft form are not particularly applicable to associations, and the responses associations will be forced to provide might have the unintended consequence of unjustly casting them in an unfavorable light, especially in the public view." As ASAE has pointed out, even the summary page, which is largely geared to charitable organizations, will result in an incomplete and potentially confusing or erroneous view of other types of nonprofit organizations, like NEI. We detail specific areas of concern below.

A. Compensation

NEI believes the requirement (now applicable only to 501(c)(3) organizations) that associations report the compensation of highest paid independent contractors and highest paid employees who are not officers and directors lacks a sound policy basis. While the need for public disclosure of these kinds of expenditures may be important for a charitable organization funded by the public, the same argument does not apply to a nonprofit organization like NEI, which is responsible to a relatively small group of members and stakeholders who empower the governing board to deal discretely with such matters in compliance with the law. Requiring the public disclosure of such information will not necessarily advance good governance or prudent management decisions, but likely will feed the interests of individuals or groups who oppose actions by an association, as they will be able to search for such items as the level of funding for polling or public relations work and use that information to challenge a view or action they oppose. And, significantly, if this provision requires that legal fees be disclosed, this disclosure clearly undermines—if not destroys—the confidentiality associated with the attorney-client relationship.²

The new Form 990 also requires filers to identify current and former officers, directors, key employees and highly compensated individuals who receive or accrue

² For the same reason, NEI does not think that legal fees should be disclosed in Part V.

compensation from related organizations and any source other than the organization “for services rendered to the organization.” For most associations, directors (and, in some cases, officers) are employed and paid by the members for their work on behalf of the member in connection with the association. Thus, it should be made clear that a “related” organization does not include a member company. This requirement should not be applied so as to require the disclosure of compensation that a member company pays to the individual who serves as its representative to the association.

Schedule J, which applies to (among others) officers and directors who receive or accrue compensation from any source, other than the organization or a related organization, for services rendered to the organization, raises these same questions. Consistent with the comments above, Schedule J should not include compensation paid by member companies to their employees who represent them in connection with the association’s activities. Otherwise, the association must determine how the member is compensating the employee, allocate a portion of the compensation paid by the member to their employee for his or her efforts in connection with the association, and then break down the allocated portion to fit the various categories of compensation listed in Schedule J. It seems both illogical and impractical to require such disclosure regarding the compensation paid by member companies to their employees.

Schedule J also requires the filer to provide nontaxable expense reimbursements (e.g., reimbursements for business air travel, local cab fare, business meals, etc.). Not only do we question the relevance of this information, but we believe it will increase the cost of producing the Form 990 as well as likely requiring associations to adopt additional internal recordkeeping procedures. Further, as ASAE correctly points out, “these amounts merely represent repayments for legitimate business expenditures submitted and documented under an ‘accountable plan,’ no meaningful information can be gleaned by the amount of expenses so reimbursed.”

Further, given the legality of reimbursement for business travel (including first class seating), club dues and the use of a personal residence for business activities, requiring an association to report these items in the context of executive compensation has the potential to distort total compensation figures and sensationalize actions that, in most cases, have been approved by an association’s governing body. At bottom, we question the inherent value of reporting whether an association pays or reimburses for first-class travel, club dues or use of personal residence while recognizing that the considerations may be different as applied to Section 501(c)(3) charitable organizations.

B. Information Regarding Governance and Management

The new Form 990 appears to have been revised with the express purpose of driving nonprofit organizations to implement specific policies and procedures, although most are not required by law (e.g., Sarbanes-Oxley Act). While we recognize the benefit of implementing many or all of these good governance practices, it simply is not practical to implicitly force all associations (which vary markedly in size and resources) to adopt them. Recognizing that the Form does not *require* that an organization have a policy, the

questions may nevertheless be read by the public to imply that the filer should be doing all of the things listed. Additionally, for example, by asking about the process for determining compensation, the Form may drive associations to apply the excess benefit transactions tests which do not apply to associations (Part IIB, line 3). Although this may constitute a good governance practice, Congress has seen fit to apply these rules only to Section 501(c)(3) and 501(c)(4) organizations, and the IRS should not effectively expand this category to include all nonprofit organizations.

We also question the rationale for requiring filers to identify changes in documents *beyond those* that would enable the Service to determine whether an organization which has been granted tax exempt status is adhering to those requirements necessary to maintain that status. Thus, we recommend that the Form not require reporting of changes other than to organizing (articles of incorporation) and governing (bylaws) documents. The Form should be modified so as not to require the filer to report changes to conflict of interest, whistleblower, document retention, and audit committee policies, nor to compensation policies, as the existence of such policies is covered elsewhere on the Form.

C. Lobbying and Political Activities

For the reasons identified in ASAE's comments, we also request deletion of Question 5 of Schedule C. In addition, we note that Schedule C asks for a description of the association's political activities, the amount spent for Section 527 exempt function activities, and the amount contributed to other organizations for section 527 exempt function activities. We request that the agency clarify how the filer should treat administrative expenses incurred by the association to organize and operate its affiliate (connected) PAC but which are not contributions.

D. Overall Burden

As stated earlier, NEI believes that the objectives set out by the Service as the bases for revising the Form 990 are sound. Although we have not independently verified ASAE's estimate of 50 percent more time being spent to comply with the information requirements of the revised Form, we are concerned that the additional time and costs which will be incurred by associations are not justified by the value of the information to be provided.

* * * * *

NEI appreciates the opportunity to comment on the draft Form 990 and your consideration of our concerns and suggestions. As stated above, we request that the Service extend the comment period to allow greater consideration of the proposed changes and more time to engage affected stakeholders. This will help ensure that the revised Form both meets the Service's stated objectives and is properly designed to enable associations and other filers to comply with the new requirements in a timely and

reasonably cost-efficient fashion. Relatedly, we request a delay until 2010 (tax year 2009) for use of the Form.

If you or members of your staff have questions regarding these comments, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Ellen C. Ginsberg". The signature is written in a cursive, flowing style.

Ellen C. Ginsberg
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From: [Griffin, Mary](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on Form 990 Redesign
Date: Friday, September 14, 2007 2:50:56 PM
Attachments: [070914form990commentsfinal.doc](#)

Attached please find comments from NCBA on the Form 990 Redesign proposal

Attn: SE:T:EO

Mary Griffin / Senior Policy Advisor / NCBA
1401 New York Ave. NW / Washington, DC 20005
p 202-383-5450 f 638-1374 / _____

visit us at www.ncba.coop



September 14, 2007

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

The National Cooperative Business Association (NCBA) is a national association that represents all types of cooperatives. On behalf of the Association and its members, we respectfully submit the following comments in response to your request of June 14, 2007, regarding the draft Form 990 and accompanying schedules.

NCBA is a section 501(c)(6) membership organization of almost 500 cooperatives, associations, and individuals. Cooperatives are owned and democratically controlled by those who buy their products or use their services. Cooperatives operate as not-for-profit businesses in that they return any profits they earn to their members based on the amount of business the members do with the co-op.

Some cooperatives are organized under section 501(c) of the Internal Revenue Code. Many of our members file tax returns under various sections of chapter 501(c) and would be affected by the proposed changes.

We request that the time for comments be extended by another 30 to 60 days to give organizations affected by the changes more time to adequately respond. We only recently found out about the IRS proposal to redesign the form 990. From our initial analysis of the proposal, the draft Form 990 poses questions and concerns for our organization and members. In addition to the proposal's impact on our 501(c)(6) association, the proposed changes to the form will impact our members tax-exempt entities differently depending on the section under which they file. We have informed our members of this new draft, as well as your agency's request for comments, but many members remain unaware of the significant changes proposed and their potential impact on their organizations.

We request that the IRS delay by one or two years the implementation of the new form to allow affected organizations time to set up their systems to comply with the new requirements. If the new form is required for tax years beginning in 2008, organizations will have to change information gathering and other systems starting in January of 2008. Organizations may not be able to budget and otherwise prepare for the additional costs and staff time associated with implementation of the new form.

As an association dedicated to promoting an open and democratic business model, we are very supportive of enhancing the goals of transparency and accountability. While we applaud the redesign effort and the goals of increasing transparency, promoting tax compliance, and minimizing burdens on tax exempt entities, it is unclear whether the proposal's requirements are all related to those goals. We are concerned about the additional costs the new requirements would impose on our organizations and members, particularly where the information requested may not be relevant to the non-profit status of the organization.

We understand the need to ensure that organizations are not abusing their tax status and misrepresenting themselves to the public. But we are also concerned that some of the requirements may subvert the valuable work and business of the filing organizations. Some staff time would have to be diverted from core programs and purposes to recordkeeping and information gathering activities.

We anticipate higher auditing and accounting costs as it will take more time for auditors to gather and assess the information required by the new form. For many of our members, these costs will be in addition to mounting accounting and auditing costs associated with the Sarbanes-Oxley legislation. A delay in the

implementation of the new form would allow entities to better budget for the additional costs.

Some of the information requested relates more to how organizations conduct their business and appears to be prompting organizations to be run in a certain way, prescribing “best practices.” That may be a laudable goal but one that may not be appropriate for tax forms. As an organization with significant activity outside the U.S., we are also concerned about the extent of reporting requirements for those activities. Again, we request time to assess better these requirements and more time for our accounting and other systems to adjust to the requirements.

Thank you for the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in black ink that reads "Paul Hazen". The signature is written in a cursive, flowing style.

Paul Hazen
CEO

From: [Jessica Strunkin](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Draft Form 990 Comments
Date: Friday, September 14, 2007 2:45:10 PM
Attachments:

To Whom It May Concern:

I am writing to you on behalf of the North Central Massachusetts Chamber of Commerce regarding the draft Form 990 and accompanying schedules for the 2008 return filing year. Not only do we have concerns about some of the changes to the form for our own organization but also for the variety of nonprofit organizations in our membership.

Our Chamber is a section 501 (c)(6) membership organization with approximately 1500 member firms. While we recognize the need to redesign Form 990, many of the proposed changes raise concerns about the increased burden on the nonprofit sector that the new, expanded form and schedules will create whether in the form of increased time spent on completing the forms or the increased cost in the effort to comply by hiring professionals to decipher the new requirements.

Specific areas of concern include the new requirements for reporting on compensation, key employees, governance and fundraising. We appreciate the guiding principles of enhancing transparency, promoting compliance and minimizing the burden on filing organizations, but fear the unintended consequences the draft Form 990 may present. Requests for calculations of executive compensation amounts and fundraising contributions as a percentage of total revenues may create a false picture of an organization's performance by unsophisticated readers. In a similar light, the request for a listing of the organization's five highest compensated employees as well as disclosure of the city and state for every person listed in the compensation section or Part II seems unnecessarily invasive and lacking much purpose beyond sensationalism.

The questions about governance seem inappropriate for a tax return and outside of the IRS' authority. Moreover, the draft Form 990 does not seem appropriately geared toward non-charitable organizations and associations, which make up a large portion of the tax-exempt community, and as such may create an additional administrative burden in addition to taking many reporting figures out of context.

Additionally, the speed with which the new form is being implemented does not allow sufficient time for the many types of nonprofit organizations to prepare for the broad changes, not to mention submitting thoughtful comments about the new forms and regulations during the brief comment period.

It would be a shame to rush into such important changes while unintentionally creating more work for the tax-exempt community and less time for them to meet their missions.

Thank you for your consideration,

Jessica

Jessica Strunkin
Government Affairs Director
North Central Massachusetts
Chamber of Commerce
(978) 353-7600 ext 241

From: [Frank Sulen](#)
To: [*TE/GE-EO-F990-Revision;](#)
CC:
Subject: Comments on IRS Form 990 revision
Date: Friday, September 14, 2007 1:14:46 PM
Attachments: [IRS Form 990 comments.pdf](#)

The attached PDF are my comments. Thanks for the opportunity to provide input into the process.

Frank Sulen, CPA
Chief Financial Officer
National Association of College Stores

<<IRS Form 990 comments.pdf>>

September 14, 2007



Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

In my capacity as the Chief Financial Officer of the National Association of College Stores (NACS), I respectfully submit the following comments in response to your request of June 14, 2007, regarding the draft Form 990 and accompanying schedules, currently scheduled to be released in final form in 2009, for the 2008 filing year. Many of my comments are consistent with those shared with you by the American Society of Association Executives (ASAE).

NACS is a section 501(c)(6) membership organization of more than 4,000 college bookstores and industry partners representing the college bookstore industry in higher education. NACS owns two single member for-profit LLC's that provide important member benefit services. Additionally, NACS is also affiliated with a section 501 (c) (3) charitable and educational foundation that conducts important education and research for the college bookstore industry.

For over 23 years I have been the chief financial officer of NACS and have served on a number of board of director positions of other nonprofit organizations in a volunteer capacity. I am also a member of ASAE and have served as chair of their F&A section council in 1997-98. As such, I have become very familiar with Form 990 reporting requirements over the years and in my professional capacity have compiled and filed Forms 990 & 990-T. It is my opinion that the draft Form 990 poses significant questions and concerns for NACS, other associations and other nonprofit organizations that are required to file. Due to the diversity of organizations in the tax-exempt community – diversity in size, type of

organization, activities, and sources of revenue – the proposed changes to the form will impact tax-exempt organizations differently.

I am aware of and appreciate the IRS's stated willingness to modify parts of the new form based on comments received by September 14, 2007, the end of the 90-day comment period. However, I strongly feel that the brevity of this period will not allow for proper comprehension and input from the majority of organizations filing Form 990. Because of the lack of awareness among the majority of filing organizations, and the number of unanswered questions for those few that have studied the draft form, rushing the Form 990 rewrite for any reason, including those related to budget and programming, would be a mistake.

Ideally, I would like to see an extension of the comment period to allow for prudent consideration of the new draft form and its implications for the different types of filing organizations. I acknowledge the IRS's contention that this may not be possible, because of technological and budgetary reasons. Accordingly, I request a delay in implementation of the core form until the 2009 tax year (returns filed in 2010).

* * * * *

I applaud the Internal Revenue Service's efforts to redesign what is unquestionably an outmoded form, one that has been added to and rearranged so often over the years that it no longer has a logical flow, and is difficult for the public to understand and follow. Given the explosive growth of the tax-exempt sector since the last major redesign of the form in 1979, as well as significant changes in the complexity of tax-exempt activities, it is appropriate for the IRS to undertake this rewrite.

Your agency's guiding principles behind the redesign – to enhance transparency, promote tax compliance, and minimize the burden on filing organizations – are appreciated and understood. However, I do not believe that the draft form released in June adequately addresses these principles and have serious concerns about several new areas of focus on the new form, including calculations of executive compensation and fundraising activity as a percentage of total revenues; compensation of key employees; and requests for detailed information on governance. It is unclear whether these additional requirements will actually increase transparency, while it is very probable that the expanded form will not only increase organizations' recordkeeping and information-gathering burdens, but may actually promote greater noncompliance, as organizations struggle to keep up with an ever-growing regulatory burden that diverts valuable time and resources away from core purposes and programs.

Your agency has also publicly stated that one of your goals was to design a core form that would be "applicable to all filers." I agree that this is a sound idea. However, it is my position that the draft Form 990 is skewed entirely too much

toward charitable organizations, and does not take into account the vastly different purposes and practices of membership organizations and other non-charitable tax-exempt organizations. The end result is a form that is "foreign" to trade associations, professional societies, non-charitable 501(c)(3) organizations, and other non-charitable entities. In my view, many of the questions in the draft form are not particularly applicable to associations, and the responses associations will be forced to provide might have the unintended consequence of unjustly casting them in an unfavorable light, especially in the public view. The public and the media do not seem to be nearly as familiar with trade and professional organizations as they are with public charities. A properly-designed Form 990 could help educate them about the purpose and mission of a professional or industry-oriented association. I do not believe that the draft Form 990 accomplishes this purpose.

Summary (Part I) -- I understand that the purpose of Page 1 "Summary" section is to provide an overall "snapshot" of the organization. This is a useful and logical approach to Form 990 redesign, and I believe that the information presented in this section should be pertinent, important, consistent, and contextually accurate. The current draft summary page, however, appears to be more of a collection of disparate facts, rather than an overall cohesive picture of the reporting organization. Furthermore, the summary page calculates compensation and fundraising expense ratios that are both meaningless and grossly misleading, especially to the casual Form 990 reader.

Additionally, I do not think that the draft summary page includes sufficient information appropriate to all exempt organizations, not just to charities. Clearly, the summary in its current form is chiefly geared to charitable organizations and so provides an incomplete and potentially confusing "snapshot" of other types of organizations. I'm concerned that unsophisticated readers of the 990 may come away with an erroneous impression of non-charitable organizations, especially if they do not bother to read beyond the first page.

I have these additional specific concerns regarding the summary page:

- Questions 3 and 4 ask for total governing body members and total "independent" governing body members. Frankly, the term "independent member of a governing body" is somewhat meaningless, in the context of a trade association or professional society. By definition, a trade association is a membership organization composed of individuals or corporations who have bonded together for a common business purpose. Virtually every member of a trade association is "related" to the organization, in one form or another. This means that every single governing body member could very well fail at least one of the "independence" definitions set forth in the draft Glossary.¹ Accordingly, a

¹ The third definition of an "independent member of a governing body" in the Draft Glossary reads as follows: "A person who does not receive, directly or indirectly, material financial benefits from the

"zero" answer to Question 4 would provide a misleading and distorted picture of the trade association or professional society providing such answer.

- I do not believe that Question 6, which asks for the number of persons receiving compensation of more than \$100,000, offers any relevance to the reader, and can only be taken out of context by readers of the summary page only. The \$100,000 threshold appears arbitrarily set, and given the different types and staff sizes of tax-exempt organizations, comparisons between organizations based on this question would be wholly inappropriate. I suggest this question be eliminated from the summary page at minimum, and preferably from the entire form.
- Question 7, which asks for the highest compensation amount reported in Part II, seems to have no purpose other than sensationalism. As with Question 6, it provides salary information completely out of context with the rest of the organization, its size, mission, revenues, and programs. Providing a single compensation figure out of context is utterly misleading, especially given the diverse nature of the different types of 501(c) organizations. This reporting will lead to individuals making compensation comparables out of context. Since compensation for the chief executive officer, typically the highest compensated employee, is required in Part II of the core form, I suggest this question be eliminated from the summary page.
- Questions 8b, 19b, and 24b calculate "metrics" or percentage ratios that purport to measure certain organizational efficiencies. I strongly dispute the use of metrics in general, as by their very nature they are of limited utility and are prone to manipulation. I particularly object to the specific metrics presented on the summary page. These ratios are arbitrary; furthermore, they are neither accepted nor used in any segment of the nonprofit world. Furthermore, because of the vast diversity of organizations required to file the 990, any attempts to use these metrics to compare one organization with another -- even similar organizations -- would yield highly unreliable results. Examples:
 - An organization's fundraising efforts are not necessarily constant from year to year. In the initial years of a fundraising campaign, the "investment" (fundraising expenditure) is usually fairly large, compared with contributions actually received. A young exempt organization might end up being unjustly penalized by a meaningless, but unfavorable, ratio, because the unsophisticated

organization except, if applicable, as a member of the charitable class served by the organization." This is a definition that is clearly aimed solely at charitable organizations, but it is not at all clear whether this definition would also be stretched to apply to trade and professional association members, who do receive significant benefit from membership in an association.

donor will avoid contributing to it. And, as a single year's ratio is relatively meaningless and could be confusing, it might also be useful to have an organization disclose, on that schedule, fundraising expense information for a period of several years.

- The executive compensation ratio provides no useful information whatsoever, as it fails take into account organization size and complexity. In a small-staff organization, the CEO might be only one of a handful of employees, or may even be the sole employee. His or her compensation could, accordingly, constitute a significant portion of overall expense. Without the proper context, the casual Form 990 reader is likely to merely latch onto the reported ratio and look no further, even to other possibly clarifying information on the summary page.

I firmly request that all "efficiency metrics" or ratios be removed from the Form 990, as they will merely take the place of thoughtful evaluation on the part of Form 990 readers -- especially the media, potential donors, and grantmakers.

- The inclusion of a "consolidated financial statement" reconciliation schedule to the summary page would be useful for those organizations that are part of a related group. While the proposed reconciliation schedule (Part XIV of Schedule D) is useful in many instances, those organizations with financial information reported as part of a set of consolidated financial statements are sometimes at a disadvantage, especially when "consolidating" financial statements, breaking out separate company financial information, are not available. Readers of both the Form 990 and the financial statements of a given organization (especially grantmakers and donors) are oftentimes confused when Form 990 information does not come close to matching financial statement information, because other organizations' financial information is also included.

Additionally, it might be useful to add "consolidated financial information" lines to Part XIV of Schedule D, to allow organizations to back out consolidated financial information pertaining to related organizations.

- Questions 25 and 26 have little relevance to 501(c)(6) and non-charitable 501(c)(3) organizations, and are another example of the summary page's bias toward charitable organizations. I request that this section be moved off the front page, and replaced with more useful information, such as a summary of program service accomplishments. Additionally, Question 2, which asks for the three most significant activities and activity codes, is completely meaningless to the casual Form 990 reader, who would be better served by a brief summary of annual accomplishments.

Compensation (Part II and Schedule J) -- I firmly support the concept of transparency, including disclosure of compensation for officers, directors, and key employees. Nevertheless, I'm greatly concerned over the extensive compensation reporting required by the new Form 990. Specific concerns are as follows:

- I question as inappropriate the expansion (in the draft Glossary) of the definition of "key employee" to include a person "who has responsibilities, powers, or influence like those of officers, directors, or trustees, *including a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization.*" [emphasis added] In practice, these so-called "department heads" generally have less power and influence than the Glossary definition assumes, and including their compensation will serve no real purpose, other than providing additional fodder for reporters, as well as disclosing potentially damaging "inside" information to competing organizations. I suggest that the IRS return to the definition for "key employee" currently included in the Form 990 instructions: "any person having responsibilities, powers or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization . . . [for example] a chief financial officer and the officer in charge of the administration or program operations are both key employees if they have the authority to control the organization's activities, finances, or both." I interpret this definition as excluding department heads, as they in most cases have insufficient authority to "control" the organization's activities or finances, and so do not have powers or influence "similar to those of officers, directors or trustees."
- Likewise, I question expansion of compensation reporting for the "5 highest paid" employees, believing it also is inappropriate, for non-charitable organizations, for the same reasons. I request that non-section 501(c)(3) organizations be exempted from this additional reporting requirement, as well as from the "5 highest paid independent contractors" requirement.
- I am troubled by the new Form 990's disclosure of the city and state of residence for every person listed in Part II, Section A. Because the Form 990 is available to anyone over the Internet via Guidestar (and possibly other online venues, as well), the disclosure of this information could lead to privacy invasion, or even outright identity theft. In public comments, you have indicated that knowing the physical location of these individuals is meaningful for 990 reporting purposes. ("We believe it is important to know, for example, if an organization is situated in New York City but all of

its board members are in California."²) I strongly dispute the importance of this information, and suggest that providing the member's state of residence, rather than city and state, would accomplish the same purpose, and would constitute a far lesser invasion of privacy. I prefer, though, that the organization's address continue to be an alternative for this reporting purpose.

- I am very concerned over one particular question asked in Section B of Part II. Question 3 asks whether the compensation process for an organization's CEO, Executive Director, Treasurer, and CFO includes "a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision." This is a difficult question for most associations to answer with any accuracy, because it is common industry practice for an association's Board of Directors to hire and compensate the CEO and/or Executive Director;³ but not the CFO -- who is usually hired and compensated by the CEO or Executive Director. Accordingly, if an association complied with stated procedures for every listed position *other* than the CFO, it would still be forced to answer "no" to this question. This would be a highly misleading answer. I recommend that if this question is retained in the final Form 990 version, that a checkbox be provided for *each* position: CEO, Executive Director, Treasurer, CFO, and permit an organization to check "N/A" if the position is unpaid or does not exist at that particular organization.
- With regard to executive compensation reporting on Schedule J, I do not see the utility of providing nontaxable expense reimbursements (Column E). As these amounts merely represent repayments for legitimate business expenditures submitted and documented under an "accountable plan," no meaningful information can be gleaned by the amount of expenses so reimbursed. Moreover, any large amounts listed may be wrongly misconstrued by non-sophisticated readers of the form. Organizations vary in their reimbursement policies, and what may seem like an excessive amount of reimbursement may merely reflect a difference in accounting practices and procedures: employees and board members of Organization A may, for example, book and pay for their own travel arrangements, whereas at Organization B, all travel arrangements are booked and paid for by the organization itself. Furthermore, including nontaxable reimbursements in Column (F) significantly distorts total compensation figures.

² Remarks of Elizabeth Goff, IRS Tax Law Specialist, transcript of *Phone Forum-Draft Redesign Form 990*, July 18-19, 2007.

³ The Treasurer of a trade association, business league or professional society is usually an unpaid volunteer Board member. Additionally, a trade association generally will have an Executive Director or a CEO, but not both.

Governance (Part III) -- I question the statutory authority of the IRS to ask these questions, and believes they should be left out of the final Form 990 version. While I believe, as IRS does, that a well-governed organization is one that is compliant, I nevertheless feel strongly that these questions are not appropriate for Form 990 reporting, nor do they accurately reflect a complete governance picture. Furthermore, the governance practices implied by these questions are not necessarily appropriate for all of the vastly different types organizations required to file a 990. Some of the practices suggested by the questions are, frankly, impractical. For example, it is not usual practice for an organization's governing body to review the Form 990 before it is filed, nor should it be necessary, as long as organization management is accurately following a Board's directives. Additionally, not all documents listed in Question 11 are required to be disclosed, and I am concerned that a "no" answer may have negative implications, creating a *de facto* standard where none should exist.

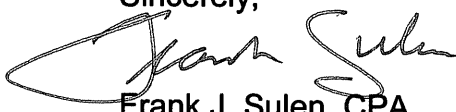
Statement of Program Service Accomplishments (Part IX) -- I believe information about the organization's most significant program service accomplishments is essential to any public disclosure and the reader's understanding of whether an organization is meeting its exempt purpose. As this important information is minimized by its location on the last page of the core form, I recommend this information be moved up toward the beginning of the form.

Administrative Burden -- Overall, I object to the additional taxpayer burden inherent in the expanded Form 990. Organizations large and small, charitable and non-charitable, will be forced to spend many additional hours gathering information for both the core form and the schedules. I have heard anecdotally from accountants that the average association and nonprofits will probably spend at least 50% more time complying with the extra information requirements imposed by this form. This will be especially burdensome for small organizations, especially those staffed chiefly by volunteers, whose resources are thin to begin with.

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I believe that transparency, compliance, and reduced regulatory burdens benefit both nonprofit organizations and the communities they serve. I do not believe that the current draft effectively addresses these principles. I sincerely hope that the IRS accepts my comments and those of others in properly formulating a revised Form 990 that will indeed accomplish these stated goals of the IRS *without* unintended consequences and increased burden on the filing community.

Sincerely,


Frank J. Sulen, CPA
Chief Financial Officer